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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**THE STATE OF CALIFORNIA; THE
STATE OF DELAWARE; THE STATE OF
MARYLAND; THE STATE OF NEW
YORK; THE COMMONWEALTH OF
VIRGINIA,**
Plaintiffs,

v.

**ALEX M. AZAR, IN HIS OFFICIAL CAPACITY
AS SECRETARY OF THE U.S. DEPARTMENT OF
HEALTH & HUMAN SERVICES; U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; R. ALEXANDER
ACOSTA, IN HIS OFFICIAL CAPACITY AS
SECRETARY OF THE U.S. DEPARTMENT OF
LABOR; U.S. DEPARTMENT OF LABOR;
STEVEN MNUCHIN, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF THE U.S.
DEPARTMENT OF THE TREASURY; U.S.
DEPARTMENT OF THE TREASURY;
DOES 1-100,**

Defendants,
and,

**THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE; MARCH
FOR LIFE EDUCATION AND DEFENSE
FUND,**

Defendant-Intervenors.

4:17-cv-05783-HSG

**REPLY IN SUPPORT OF THE STATES'
ADMINISTRATIVE MOTION TO LIFT
THE STAY**

Judge: The Honorable Haywood S.
Gilliam, Jr.
Trial Date: Not set
Action Filed: October 6, 2017

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MEMORANDUM OF POINTS AND AUTHORITIES

The States respectfully request that this this Court lift the stay on the district court proceedings to ensure that the States can seek to enjoin unlawful final federal rules before they take effect on January 14, 2019.

1. This Court has jurisdiction to lift the stay. Because an appeal under 28 U.S.C. § 1292(a)(1) from an interlocutory order involving a preliminary injunction does not divest the district court with jurisdiction to proceed with a decision on the merits, absent a stay order issued by the Court of Appeal, this Court may proceed on the merits. *See Ex parte Natl. Enamling & Stamping Co.*, 201 U.S. 156, 162 (1906) (“The case, except for the hearing on the appeal from the interlocutory order, is to proceed in the lower court as though no such appeal had been taken, unless otherwise specifically ordered.”); *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982) (“it is firmly established that an appeal from an interlocutory order does not divest the trial court of jurisdiction to continue with other phases of the case”); *ACF Industries, Inc. v. Calif. State Bd. of Ed.*, 42 F.3d 1286, 1291 n.4 (9th Cir. 1994); *Apple, Inc. v. Samsung Elec. Co., Ltd.*, No. 12-cv-630-LHK, 2014 WL 6687122, at *6 (N.D. Cal. Nov. 25, 2014). It is thus undisputed that this Court has jurisdiction to lift the stay.

2. If the Court does not lift the stay, the States will be unable to seek to enjoin the unlawful federal regulations before they take effect. These final federal rules should not be insulated from judicial review. Rather, this Court should review the States’ legal challenges to the final federal rules, before they take effect and cause harm to the States and their residents. At the very least, this Court should lift the stay, thereby allowing the States to file their preliminary injunction motion and supporting documents and ensuring that the matter is fully briefed before January 14, 2019.

1 Dated: December 6, 2018

Respectfully submitted,

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4 /s/ **Karli Eisenberg**

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